

# DOMESTIC ABUSE (SCOTLAND) ACT 2018

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## EXPLANATORY NOTES

### THE STRUCTURE AND A SUMMARY OF THE ACT

#### Part 1 – Offence as to Domestic Abuse

##### Presumption, alternative and penalty

##### *Section 7 - Presumption as to the relationship*

44. [Section 7](#) provides that the matter of the accused (A) being the complainer (B)'s partner or ex-partner is to be taken as established unless the matter is challenged prior to the trial taking place.
45. In summary proceedings, this challenge will be by preliminary objection before the plea is recorded or by later objection that the court allows in special circumstances. In proceedings on indictment, this challenge will be by giving notice of a preliminary objection in accordance with established procedures in sections 71(2) or 72(6)(b)(i) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Section 71(2) of the 1995 Act is a procedure for dealing with preliminary pleas and preliminary issues at the first diet in solemn proceedings. Section 72(6)(b)(i) of the 1995 Act is a procedure for disposing of preliminary issues at the preliminary hearing in solemn proceedings.

##### *Section 8 - Alternative available for conviction*

46. [Section 8\(1\)](#) provides that where a charge is brought for the offence at section 1 of the Act, but the court is not satisfied that the accused committed the offence, it is possible to convict the accused of a specified alternative offence where it is proved (to the normal criminal standard of proof) that the accused committed the alternative offence.
47. [Section 8\(2\)](#) provides that the alternative offences are the offence of threatening or abusive behaviour under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and the offence of stalking under section 39 of that same Act.
48. The offence of threatening or abusive behaviour may be proven where the court is satisfied that an accused engaged in at least one act that amounted to threatening or abusive behaviour, but it is not proven that the accused engaged in a course of behaviour against the complainer. The offence of stalking may be proven where the court is satisfied that an accused engaged in a course of behaviour which caused the victim to suffer fear or alarm, but it is not proven, for instance, that the accused was the partner or ex-partner of the complainer.
49. This section sits alongside the provision for a common law alternative to a statutory offence that is found in paragraph 14 of schedule 3 of the 1995 Act.

##### *Section 9 - Penalty for offence under section 1(1)*

50. [Section 9](#) provides for the available penalties for the offence.

***Section 10 – Meaning of references to behaviour***

51. **Section 10** provides for the meaning of references to behaviour for the purposes of the offence.
52. **Section 10(2)** provides that “behaviour” includes things said or otherwise communicated as well as things done. It also encompasses an intentional failure to do, say or otherwise communicate something (e.g. a failure to pass on times and dates of appointments or social occasions, or a failure to feed a family pet).
53. **Section 10(3)** provides that behaviour directed at a person includes behaviour directed towards property. It is not a requirement that the property must belong to the complainer. It could, for instance, be shared property or property belonging to a third party, such as the victim’s parents. Property includes pets or other animals (for example agricultural livestock) whether belonging to the victim or others.
54. It also provides that behaviour directed at a person includes behaviour carried out with or through a third party. This might include, for example, getting another person to spy on or report on the activities of the complainer. The third party’s involvement could possibly be unwitting or unwilling, as they may be entirely unaware that their behaviour was helping the perpetrator to abuse the victim or may have been coerced into participating in the abuse.
55. **Section 10(4)** provides that a course of behaviour involves behaviour on at least two occasions. It would be for the court to determine in the particular circumstances of a case whether two incidents occurring far apart in time, with no evidence that they formed part of any wider pattern of behaviour, truly amounted to a course of behaviour.

***Section 11 – Meaning of partner and ex-partner***

56. **Section 11** provides that, for the purpose of the offence, “partner” means a person’s spouse or civil partner (or cohabiting equivalent), or a person in an intimate personal relationship with the accused. Former relationships of the specified types are covered in addition to current relationships.
57. The phrase “intimate personal relationship” is intended to cover relationships between boyfriends and girlfriends (including same-sex relationships), although the relationship need not be sexual. Other family relationships and other types of relationship (e.g. between friends or business partners or work colleagues) are not covered by the offence.